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**HOUSE BILL 2806**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Goodman, Fey, and Davis

AN ACT Relating to mediation in family law cases involving children; and amending RCW 26.09.015.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 26.09.015 and 2008 c 6 s 1044 are each amended to read as follows:

(1) In any proceeding under this chapter, other than a proceeding under subsection (2) of this section, the matter may be set for mediation of the contested issues before or concurrent with the setting of the matter for hearing. The purpose of the mediation proceeding shall be to ((~~reduce acrimony which may exist between the parties and to develop an agreement assuring the child's close and continuing contact with both parents after the marriage or the domestic partnership is dissolved~~)) assist parties to reach agreements on contested issues. The mediator shall use ((~~his or her~~)) best efforts to effect a settlement of the dispute.

(2)(a) ((~~Each superior court may make available a mediator. The court shall use the most cost-effective mediation services that are readily available unless there is good cause to access alternative providers. The mediator may be a member of the professional staff of a family court or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court is not required to institute a family court.~~

~~(b)~~)) In any proceeding involving issues relating to residential time or other matters governed by a parenting plan, except relocation or modification of a parenting plan, the matter ((~~may~~)) must be ((~~set~~)) scheduled for mediation of the contested issues ((~~before or concurrent with the setting of the matter for hearing.~~)) within ninety days after service and filing of responsive pleadings are completed, or due, unless excused for good cause shown. Parties must address issues in a parenting plan in mediation prior to any court hearings for the establishment of a final parenting plan, unless excused for good cause shown, joinder, or mutual agreement by the parties. The purpose of early mediation proceedings shall be to reduce acrimony that may exist between the parties and to seek to develop an agreement for a workable parenting plan.

(b) Each superior court shall establish a program and rules to provide for early mediation of cases involving issues relating to residential time or other matters governed by a parenting plan. Such rules must address:

(i) The number and length of mediation sessions, which in no case may be less than one mediation session, and additional sessions as are deemed appropriate by the mediator and the parties. Each mediation session must be at least two hours unless mediated issues are resolved prior to that time or the mediator and parties agree that further mediation would be unproductive or futile;

(ii) Mandatory expertise and training for mediators;

(iii) Limitation of the mediation program to issues relating to residential time or other matters governed by a parenting plan;

(iv) Standards for determining which issues should be referred to mediation and timelines for mediation to be concluded; and

(v) A process for a party to seek excusal from mediation because an impediment to mediation exists, including allegations of family or intimate partner violence, cognitive impairment, behavioral health disorder, or other circumstances that may render mediation inappropriate or that would unreasonably interfere with the mediation process. The process may include a form that parties may use to seek excusal.

(c) Mediation shall be required as provided under this subsection (2) except:

(i) For good cause shown upon motion and approval by the court;

(ii) Where a domestic violence restraining order or protection order, excluding ex parte orders, involving the parties has been entered by a court at any time within the previous twelve months;

(iii) Where a domestic violence no-contact order exists under chapter 10.99 RCW; or

(iv) Where the court upon motion finds that domestic abuse has occurred between the parties and that such abuse would interfere with arm's length mediation.

(d) Either party may by motion seek a court order requiring mandatory mediation in a case otherwise exempt under (c)(ii) through (iv) of this subsection (2) if the moving party believes that the parties would be able to mediate their dispute at arm's length under the particular circumstances of the case.

(3)(a) Each superior court may make available a mediator. The court shall use the most cost-effective mediation services that are readily available unless there is good cause to access alternative providers. The mediator may be a member of the professional staff of a family court or mental health services agency, a dispute resolution center established under chapter 7.75 RCW, or any other person or agency designated by the court. In order to provide mediation services, the court is not required to establish a family court.

(b) Counties may, and to the extent state funding is provided therefor counties shall, provide both predecree and postdecree mediation at reduced or waived fee to the parties ((~~within one year of the filing of the dissolution petition~~)).

((~~(3)~~)) (c) If a party is indigent or has a court order for a fee waiver pursuant to Washington state rules of court, general rule GR 34, the party is not required to pay any fee for the mediation.

(4)(a) Mediation proceedings under this chapter shall be governed in all respects by chapter 7.07 RCW, except as follows:

(i) Mediation communications in postdecree mediations mandated by a parenting plan are admissible in subsequent proceedings for the limited purpose of proving:

(A) Abuse, neglect, abandonment, exploitation, or unlawful harassment as defined in RCW 9A.46.020(1), of a child;

(B) Abuse or unlawful harassment as defined in RCW 9A.46.020(1), of a family or household member as defined in RCW 26.50.010((~~(2)~~)); or

(C) That a parent used or frustrated the dispute resolution process without good reason for purposes of RCW 26.09.184(4)(d).

(ii) If a postdecree mediation-arbitration proceeding is required pursuant to a parenting plan and the same person acts as both mediator and arbitrator, mediation communications in the mediation phase of such a proceeding may be admitted during the arbitration phase, and shall be admissible in the judicial review of such a proceeding under RCW 26.09.184(4)(e) to the extent necessary for such review to be effective.

(b) None of the exceptions under (a)(i) and (ii) of this subsection shall subject a mediator to compulsory process to testify except by court order for good cause shown, taking into consideration the need for the mediator's testimony and the interest in the mediator maintaining an appearance of impartiality. If a mediation communication is not privileged under (a)(i) of this subsection or that portion of (a)(ii) of this subsection pertaining to judicial review, only the portion of the communication necessary for the application of the exception may be admitted, and such admission of evidence shall not render any other mediation communication discoverable or admissible except as may be provided in chapter 7.07 RCW.

((~~(4)~~)) (5) The mediator ((~~shall assess the needs and interests of the child or children involved in the controversy and~~)) may interview the child or children if the mediator deems such interview appropriate or necessary, but only if both parents are in agreement that the interview is appropriate or necessary. If both parents are not in agreement, the interview may not take place.

((~~(5)~~)) (6) Any agreement reached by the parties as a result of mediation ((~~shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court~~)) must be memorialized in writing and signed by the parties. The parties shall present to the court a temporary or final parenting plan that incorporates the agreements from the mediation within fourteen days of the agreement.

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